SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-891

KENT SAXON,

Petitioner,

versus

ERLE JOHNSTON AND
THE SCOTT COUNTY TIMES, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

KENT SAXON
Pro Se

JAMES J. FOUGEROUSSE
Of Counsel
1214 Capital Towers
Jackson, MS 39205

SCOFIELDS' QUALITY PRINTERS, P. O. BOX 53096, N. O., LA. 70153 - 504/822-1611

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Petitioner, Kent Saxon, prays that a Writ of Certiorari issue to review the judgment entered by the Supreme Court of Mississippi affirming the decision and opinion rendered by the Scott County Circuit Court, being Mississippi Supreme Court Cause No. 51,277, issued on May 30, 1979, and the order overruling the petition for rehearing entered on July 11, 1979.

OPINIONS BELOW

The Supreme Court of Mississippi did not issue a formal opinion in this cause, but rather affirmed the written opinion entered by the Circuit Court of Scott County issued on October 3, 1978 (Appendix A).

JURISDICTION

The judgment of the Supreme Court of Mississippi was rendered on May 30, 1979 (Appendix B). A petition for rehearing was denied on July 11, 1979 (Appendix C).

Jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

1. Does the sustaining of a demurrer finding that the Petitioner is a quasi public figure without an evidentiary hearing deny Petitioner due process of law under the provisions of the Fourteenth Amendment of the United States Constitution, and if so, does this finding require total dismissal of this type of proceeding or is Petitioner allowed to produce proof to meet the greater burden of providing malice and recklessness in accord with recent decisions of the Supreme Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States
Amendment XIV, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

On February 27, 1978, Petitioner filed a libel suit in the Circuit Court of Scott County, Mississippi, against Erle Johnston and the Scott County Times for certain publications concerning the Petitioner.

The Respondents filed an Answer, plea in bar, and general demurrer on April 5, 1978. On September 15, 1978, the cause was heard regarding the plea in bar and general demurrer.

The trial court, without affording Petitioner an evidentiary hearing and considering matters outside the scope of the pleadings, found that the Petitioner was a

"quasi public figure" and sustained the demurrer of the Respondents resulting in the dismissal of Petitioner's libel action.

The Petitioner appealed the lower court's sustaining of the demurrer and the Supreme Court of Mississippi affirmed the trial court's action on May 30, 1979. The Supreme Court of Mississippi denied a rehearing of this cause on July 11, 1979.

REASONS FOR GRANTING THE WRIT

Petitioner respectfully asserts that he was denied due process of law in that even minimal standards require that a hearing be meaningful and not a mere shallow event. *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 257 (1970), *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). The trial court found Petitioner to be a "quasi public figure" based solely on unsworn allegations attributed to Petitioner and the contents of the pleadings.

Under Mississippi law, the Petitioner's declaration stated a cause of action. Petitioner charged that Respondents published false, vicious, and libelous articles and he was injured thereby, and that such articles were motivated by actual malice. Petitioner further included, as an exhibit, copies of the front page of Respondents' newspaper. Pursuant to the Mississippi Code, Annotated, Section 11-7-53 (1972) and Mississippi Code, Annotated, Section 95-1-1 (1972) the declaration stated a cause of action. (Appendix D).

The Respondents filed an Answer and demurrer, inter alia, admitting the publications but denying the malice and reckless disregard for truth or falsity of the published statements.

A hearing was had on the demurrer wherein the Court considered matters outside the scope of the pleadings and dismissed the Petitioner's declaration. A demurrer may not "speak" so as to become a type of summary judgment and only matters contained in the declaration and the demurrer may be heard. *King v. Mississippi Power & Light Company*, 142 So.2d 222 (Miss. 1962) and where there is a question of fact the cause should proceed on the merits even though the demurrer is technically sustainable, *Deaton v. Delta Democrat Publishing Company*, 326 So.2d 471 (Miss. 1976).

For argument purposes even if Petitioner admits he is a "quasi public figure", of which there has been no proof, *Times Inc. v. Firestone*, 424 U.S. 448, 96 S.Ct. 958, 47 L.Ed.2d 154 (1976), he respectfully asserts that to summarily dismiss his cause of action violates due process of law as set forth in the Fourteenth Amendment to the United States Constitution.

The trial court held in dismissing this suit, in part:

> "The Federal Courts have preempted the field of libel and slander and have established that hatred, ill will, enmity, intent to harm, or negligence are insufficient to establish malice

> toward those involved in discussions on public issues. That the Defendants are protected under the First and Fourteenth Amendments of the United States Constitution, unless the Plaintiff shows malice. . . . . ."

Petitioner asserts that he was not allowed to prove the "actual malice" standard set forth in *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). The decision of the Mississippi Supreme Court affirming the lower court's action further denies Petitioner the standards set forth in *Herbert v. Lando, et al*, 435 U.S. 922, Slip Opinion 77-1105, decided April 18, 1979, in meeting the higher burden of his proof which decision further denies Petitioner due process of law.

It cannot be stated that due process requires a total dismissal of Petitioner's action, rather Petitioner should be allowed to proceed, if necessary upon a higher burden of proof, to prove his case. The First and Fourteenth Amendments to the United States Constitution do not require a dismissal of this cause of action and Petitioner should be allowed to continue his case in the trial courts of Mississippi, in accord with the sound and recent decisions of the United States Supreme Court.

CONCLUSION

For the above stated reasons, Petitioner respectfully prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

_____

KENT SAXON, Pro se

_____

JAMES J. FOUGEROUSSE,
Of Counsel
1214 Capital Towers,
Jackson, MS 39205

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have mailed three copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of Mississippi to Honorable O. B. Triplett, P.O. Box 247, Forest, MS 39074, by United States mail, properly addressed and postage prepaid, this the ____ day of December, 1979.

_____

JAMES J. FOUGEROUSSE

APPENDIX A

Circuit Court of Scott County, Mississippi

KENT SAXON

versus C.A. No. 4855

ERLE JOHNSTON and
THE SCOTT COUNTY TIMES, INC.

Filed: Oct. 3, 1978

OPINION

This matter is before the undersigned Special Judge by appointment and commission of the Governor of the State of Mississippi to specially hear and determine this cause of action arising in Scott County, State of Mississippi.

By agreement of the parties the cause was heard in vacation on September 15, 1978, on a plea in bar and general demurrer. The plea in bar went to the allegations set forth and contained in items 3, 4, 6 and 7 of the charges of the declaration and upon the hearing the Plaintiff, Kent Saxon, acknowledged that the plea of the one-year statute of limitations was well taken and the allegations thereof was for the sole purpose of a charge of malice so the court finds that the allegations thereof are barred by the one-year statute of limitations and the fact of the case should not have been pleaded.

The above can well be appreciated by this Judge and this being a Pro Se proceedings by the Plaintiff, Kent Saxon, a layman, he did an excellent job in framing his pleading to not be learned in the law.

It is an honor to be confronted and have a man with the principals and strong belief in his principals as Saxon evidenced to the Court to there appear and forcifully [sic] present the issues as well as many lawyers.

It is most unfortunate that so many times great men disagree and because of this become disagreeable with one another. It is good to have issues discussed and published so basic truths can be determined from the disagreements by followers of those disagreeing. And this Judge can well appreciate the hurt feelings of the Plaintiff, Saxon who evidenced to this court many basic principals of integrity and fair play that the younger generations have allowed to be eroded away in the mores of community life and relationships as well as that of the law.

This court is therefore confronted with the following question. Does the bill of complaint of Saxon against Erle Johnston as Editor and Individually and against the Scott County Times, Inc., state a cause of action under the laws of Mississippi for libel? In order to meet the requirements of the law this Judge must assume that all facts well pleaded are true. Therefore with this assumption in mind we must go to the basic issue which is a publication of the Scott County Times

as shown by publication date line of February 23, 1977, a photo copy of this being attached as an agreed exhibit to this opinion. The article as written and published is shown to be a news coverage of a Mayor and Board of Aldermen meeting for the City of Forest. Some issues were hot between some citizens of Scott County and the Mayor and Board of Aldermen. An insert in the coverage also shows that "Saxon Tried Vainly To Get Warrant For Mayor Beard's Arrest". So the basic issue is whether a quote of the Mayor as printed which is as follows: "We also have people like Kent Saxon, and others, who will play dirty pool in an effort to harm or discredit anyone who will not give in to them," constituted libel on behalf of the Editor and the Scott County Times. Many of the allegations in the pleadings were conclusions of the pleader, and were not admitted on demurrer. Griffith, Mississippi Chancery Practice, 2nd Ed., Sec. 288; Love v. Fidelity & Deposit Co. of Maryland, 162 Miss. 532, 139 So. 387.

The Federal courts have pre-empted the field of libel and slander and have established that hatred, ill will, enmity, intent to harm or negligence are insufficient to establish malice toward those involved in discussions on public issues. That the defendants are protected under the First and Fourteenth Amendments of the United States Constitution, unless the plaintiff shows malice by proving that the defendant when he published the words (1) either knew they were false, or (2) published them in reckless disregard of whether true or not. Reaves v. Foster, 200 So.2d 453 (Miss.) (1967). Our Supreme Court of the State of Mississippi has held that:

"The right of action given by the law for libel and slander is based on the recognition that the enjoyment of a good reputation is a valuable one accorded to every citizen. The deprivation of this right through false hood and malice is actionable. But not ever [sic] stricture is actionable. When a person comes prominently forward in any way and becomes a public or quasi-public figure, he invites free expression of public opinion, including criticism. When the criticism is in the form of an opinion, relates to public assertions or acts rather than to the individual in his private affairs, is fair in the sense that the reader can understand the factual basis for the opinions containing the criticism, and the publication relates to a matter of public interest, then the occasion is conditionally privileged; *and no action will lie for such publication no matter how severe the criticism or unfavorable the comments, if the privilege is not abused.*" See Edmonds v. Delta Democrat Publishing Company, 93 So.2d 171 (1957); Boydstun v. State, 249 So.2d 411 (Miss.) (1971). Also the many authorities cited in the above cases.

The pleadings show that Saxon have [sic] for several years been constantly a worker in the political arena and joined issues with other [sic] and therefore assumed the position of a quasi-public figure and in doing this the above law is applicable to the issue.

The Demurrer is therefore sustained and an order is entered with this opinion dismissing this cause of action.

/s/ W. W. BROWN
SPECIAL JUDGE

APPENDIX B

Supreme Court of Mississippi

No. 51,277

KENT SAXON

versus

ERLE JOHNSTON and
THE SCOTT COUNTY TIMES, INC.

Filed: May 30, 1979

JUDGMENT

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Scott County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the Judgment of said Circuit Court ren-

dered in this cause on the 3rd day of October, 1978 — be and the same is hereby affirmed. It is further ordered and adjudged that the appellant do pay all of the costs of this appeal to be taxed for which let proper process issue.

APPENDIX C

Supreme Court of Mississippi

No. 51,277

KENT SAXON

versus

ERLE JOHNSTON and
THE SCOTT COUNTY TIMES, INC.

Filed: July 11, 1979

ORDER

The Petition for rehearing filed in the above styled cause is hereby denied.

APPENDIX D

Miss. Code of 1972 §11-7-53. Declaration for libel or slander

In actions for libel or slander, the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such sense, without any prefatory averment to show how such words or matter were used in that sense; and such averment shall be put in issue by the denial of the alleged libel or slander. Where the words or matter set forth, with or without the alleged meaning, show a cause of action, the declaration shall be sufficient.

Miss. Code of 1972 §95-1-1. Certain words actionable.

All words which, from their usual construction and common acceptation, are considered as insults, and calculated to lead to a breach of the peace, shall be actionable; and a plea, exception or demurrer shall not be sustained to preclude a jury from passing thereon, who are the sole judges of the damages sustained; but this shall not deprive the courts of the power to grant new trial, as in other cases.